



**National Guarantor
for the Rights of Persons Deprived of Liberty**

**THEMATIC REPORT ON THE MONITORING ACTIVITY
OF FORCED RETURN OPERATIONS OF FOREIGN CITIZENS
(JANUARY 2019 - JUNE 2021)**

From January 2019 to June 2021, the National Guarantor for the Rights of Persons Deprived of Liberty monitored 56 forced return operations to Tunisia, Nigeria, Egypt, Albania, Morocco, Algeria, Gambia, Georgia, Kosovo, Pakistan, Peru, Romania. Said monitoring activity was conducted in compliance with the National Guarantor's mandate, as provided for by Article 7 of Decree-Law No. 146 of 23 December 2013, converted into Law No. 10 of 21 February 2014, and in compliance with the expectations laid down in Articles 17-23 of the UN's Optional Protocol to the Convention against Torture (OPCAT), ratified by Italy with Law No. 195 of 9 November 2012, as well as in compliance with the National Guarantor's appointment as independent monitoring body of forced returns, as provided for by Article 8 point 6 of Directive 2008/115/EC of the European Parliament and of the Council of the European Union.

Contents

Foreword

Monitoring activities January 2019-June 2021

- A. Cooperation
- B. Staff employed in the operations
 - B.1 Training
 - B.2 Professional figures
 - B.3 Recognizability/Identifiability
- C. Information

Specific aspects concerning forced return operations of foreign citizens carried out by means of charter flights

- D. Premises used at Palermo airport
- E. Use of coercive measures
- F. Health protection and health care
- G. Child protection
- H. Frontex Complaints Mechanism

FOREWORD

Principles and standards of reference

With regard to the drawing up of the present Report, it is important to highlight from the very outset that the observations made and the Recommendations formulated refer to the national, European and international regulatory framework in force on the protection of the fundamental rights of persons subjected to forced return procedures, in particular: to *Directive 2008/115/EC*, to *Council Decision 2004/573/EC of 29 April 2004*, to the *Twenty Guidelines on Forced Return* adopted in 2005 by the Committee of Ministers of the Council of Europe, to *Frontex's Code of Conduct* adopted in 2013, to *Frontex's Guidelines on Joint Flights* adopted in May 2016, to the *Standards of the Committee for the Prevention of Torture of the Council of Europe (CPT)* and to the *Common Return Handbook* as provided for by Recommendation (EU) 2017/2338 of 16 November 2017 of the European Commission.



*National Guarantor
for the Rights of Persons Deprived of Liberty*

Furthermore, between 2019 and 2020, the National Guarantor published the volume "Norms and Normativity - Standards for the deprivation of liberty of migrants"¹ and the guide "The protection of fundamental rights in forced return operations";² the latter, in particular, provides the principles and norms that oriented and continue to orient the National Guarantor's monitoring activity, and which are at the basis of the work of observation, analysis and dialogue conducted with the involved institutions. Said publications constitute a practical check tool that lends itself to a wide-ranging use, thus fundamental not only for the National Guarantor itself, but also for all those who operate in such contexts, first and foremost the State Police in charge of the operations.³

However, it should be reminded that, in referring to said sources in order to identify the parameters by which to measure the compliance or non-compliance of the procedures, some of the sources have a directly binding and not merely indicative effectiveness, with very different effects - with respect to those generally indicated as *soft laws* - in terms of the State's liability in the event of violation.

In this sense, and also in order to prevent the country from being exposed to the risk of censures at international level as mentioned in paragraph 5 of Article 8 of the Return Directive,⁴ Decision 2004/573/EC of 29 April 2004 is binding for Member States and - as indicated in the *Common Return Handbook*⁵ - it must be considered applicable in the context of all removals by air and not only, as initially provided for in said Decision, in the context of joint removals. Therefore, failure to take into account the "Common guidelines on security provisions applicable to joint removals by air", attached to the Decision, is a particularly critical aspect, involving both a possible lack of protection for returnees and failure to comply with the obligations provided for by EU law.

¹ "Norms and Normativity - Standards for the deprivation of liberty of migrants" provides, among other things, the National Guarantor's Recommendations to the Authorities of competence regarding the monitoring conducted on forced return operations from 2016 to 2018. The volume can be downloaded from the National Guarantor's website at <https://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/ef9c34b393cd0cb6960fd724d590f062.pdf>

² Downloadable from the National Guarantor's website at:
<https://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/6d053055ead251266e3bc08817f42c4> e.pdf

³ The Guide on the Protection of fundamental rights – drawn up within the framework of the 2014/2020 AMIF project "Implementation of a forced return monitoring system" - was sent last summer to all Prefects and Provincial Chiefs of Police of the Republic. Alongside the Guide, a video tutorial on the monitoring of forced returns was also produced, which can be downloaded from the Guarantor's website. The video material and the publications can be downloaded from the National Guarantor's website and at <https://www.youtube.com/watch?v=vtBhwVH9dl4>. The aim is for these tools to become the common heritage of all institutions and bodies involved, in various capacities, in forced return operations.

⁴ Said paragraph reads as follows: 'In carrying out removals by air, Member States shall take into account the Common Guidelines on security provisions for joint removals by air annexed to Decision 2004/573/EC'.

⁵ An initial version of the *Handbook* edited by the Commission to ensure uniformity in the implementation of rules and procedures was adopted in 2015. An updated version was adopted with Recommendation (EU) 2017/2338 of the Commission on 16 November 2017 (<https://ec.europa.eu/transparency/regdoc/rep/3/2017/IT/C-2017-6505-FI-IT-ANNEX-1-PART-1.PDF>).



*National Guarantor
for the Rights of Persons Deprived of Liberty*

Transparency of the system

The present report was drawn up five years after the National Guarantor was appointed as the national monitoring body of forced returns. The experience gained and the reflections developed during this extensive period of observation require the need to dwell on critical aspects of a general nature.

In particular, the National Guarantor's aim is to highlight the necessity for the system to be better able to limit certain informalities in the practices, ensure the exercise of the right of defense, thus raising the level of protection of the fundamental rights of the persons involved.

The first critical aspect which at times lacks of transparency concerns the informality of the agreements between police forces and third countries which risks removing said agreements from parliamentary control, thus entering into conflict with Article 80 of the Constitution. The European Parliament, in its Resolution of 17 December 2020 on the implementation of the Return Directive, expressed its concern for such trend and called on "the Member States to urge and enable the Commission to conclude formal EU readmission agreements coupled with EU parliamentary scrutiny and judicial oversight".⁶ The lack of transparency of the agreements negotiated also risks entailing vagueness with respect to the applicative scope of what provided for by Article 14, paragraph 5 of the Consolidated Act on Immigration introduced by Decree Law No. 130 of 20 October 2020 regarding the extension of detention for a further thirty days in the case of agreements on returns⁷. Only the complete knowledge of all signed agreements and related texts can ensure the exact compliance with the enforcing prerequisite of the deferment of the detention period and allow an effective exercise of the right of defense.

A further area characterized by a lack of transparency concerns the operational level. In its Reports on Administrative Detention Centers, the National Guarantor has repeatedly criticized the lack of accountability and transparency in the management system of the facilities, due to the absence of a system for recording critical events that would allow useful analytical elements to be collected in a centralized database, visible in real time by all hierarchical levels of the Administration, as well as consultable by the Guarantee Authorities.⁸ A similar consideration must be made with regard to forced return operations, in relation to which, to the knowledge of this Guarantor, there is no organized mechanism for the collection and grouping of the relevant data other than the generic service reports drawn up from time to time by the Official in charge. The correct and accurate recording of every event concerning a forced return operation is necessary to ensure the effectiveness of the monitoring mechanism, to verify complaints but also to defend the Institutions from any complaints of alleged mistreatment and to prevent any arbitrary execution of the removal measure. In particular, it is essential to record cases of: acts of aggression against staff, recourse to the use of force and coercive measures, acts of restraint, medical interventions, protests and escape attempts, episodes of self-harm, complaints and requests. The collection and cataloguing of this type of data in a national database consultable on the basis of a number of questions (type of event, place, phase of the operation, etc.) is a fundamental tool for the protection of both returnees and operating personnel as well as for the management and evaluation of the

⁶ <https://www.europarl.europa.eu/doceo/document/TA-9-2020-0362JT.pdf>

⁷ In any case, the maximum detention period of a foreigner in an Immigration Return Centre cannot exceed ninety days and can be extended for another thirty days if the foreigner is a citizen of a country with which Italy has signed agreements on returns.

⁸ Now introduced in the draft of the new Regulations.



*National Guarantor
for the Rights of Persons Deprived of Liberty*

operations and in general of the functioning of the system. The National Guarantor is interested in knowing the opinion of the Central Directorate for Immigration and Border Police of the Department of Public Security on this matter.

From an operational viewpoint, another critical aspect concerns the fact that no procedure has yet been provided for the identification of *different and suitable facilities* and *suitable premises* pursuant to Art. 13, par. 5 *bis* of the Consolidated Act on Immigration, based on uniform, predetermined and transparent criteria and resulting in a public list indicating the exact relevant locations.⁹ Even the communications on operations that the National Guarantor receives on a daily basis - and which show the appreciable level of cooperation established between the Ministry of the Interior and the National Guarantor - do not clearly indicate the places other than the Immigration Removal Centers (CPR) where persons may have been detained while waiting for the definition of the validation procedure and the execution of the return measure.¹⁰

Finally, the need for transparency also concerns the collection and periodic publication of statistical data on the general phenomenon of forced returns so as to support decision-making processes, draft study documents and guide an informed public discussion. In this sense, also the European Parliament in the above-mentioned Communication has invited the Commission "to encourage and support Member States in the collection and publication of qualitative and quantitative data on the implementation of the Return Directive [...]".

The availability of updated information in the field would also enable the Judicial Authority to make a concrete assessment of the fundamental requirement of providing a reasonable standpoint for a return, on which any individual detention order must be based.

MONITORING ACTIVITIES JANUARY 2019 - JUNE 2021

From January 2019 to June 2021, the National Guarantor monitored numerous forced return operations owing to its monitors assigned to and participating in one or more phases of the process.

The National Guarantor's team of monitors also includes the regional Guarantors¹¹ and their staff, who joined the project "Implementation of a forced return monitoring system" funded by the 2014/2020 Asylum, Migration and Integration Fund¹² in order to enable the National Guarantor to set up a

⁹ In this regard, it should be recalled that Article 14 of the Consolidated Act on Immigration provides for the Immigration Removal Centers (CPR) to be "identified or established by decree of the Minister of the Interior in agreement with the Minister of Economy and Finance".

¹⁰ The National Guarantor has sent the Authorities an *ad hoc* thematic Report on the suitable premises.

¹¹ The Guarantors of the Regions of Campania, Emilia-Romagna, Lazio, Marche, Piemonte, Puglia, Sicilia and Toscana have joined the network. By virtue of the agreement signed with the Guarantor of the Piedmont Region, also the Guarantor of the Municipality of Turin has joined the national monitoring network.

¹² The project, launched in April 2017 and positively concluded in February 2020, pursued the objective of strengthening the National Guarantor's operational capacity with respect to its mandate to monitor forced returns. Owing to the resources made available by the project, it was possible to improve the training of the monitors through the recruitment of a pool of experts in the legal and medical fields and within the scope of international protection of human rights, and to increase the quality of the monitoring carried out thanks to the presence of additional professionals, such as linguistic-cultural mediators. Further information on the project and on the initiatives carried out



*National Guarantor
for the Rights of Persons Deprived of Liberty*

national network for the monitoring of forced returns. All the monitors in charge, including those of the Regional Guarantors, received specific training, participating in the various training initiatives organized by the National Guarantor within the scope of the above-mentioned project.

On 7 October 2020, the new project "Implementation of a forced return monitoring system" was launched, always owing to the resources provided by the 2014/2020 Asylum, Migration and Integration Fund. In continuity with the previous project, the new one aims to consolidate the national monitoring network.

In this context, the cooperation with the Department of Public Security, Central Directorate for Immigration and Border Police for joint training initiatives has been further consolidated. Said cooperation provides for mutual participation in the respective training initiatives of the National Guarantor - for monitors - and of the State Police -for escort operators-, and represents an excellent practice that qualifies the system and allows for a truly preventive approach.

That having been said, the following is a summary of the information collected with regard to individual procedures, divided by type of monitoring.

From January 2019 to June 2021, the National Guarantor monitored 56 forced return operations of foreign nationals irregularly present on the national territory, carried out through national charter flights (Nro, 25), joint charter flights (Jro, 15) or commercial flights (16), with the participation of monitors in one or more phases of the operations, including international transfers (46 operations were monitored also in the flight phase, only 10 in the on-the-ground phase).

The monitored operations involved a total of 935 foreign citizens who were returned to the following countries: Tunisia 19, Nigeria 9, Egypt 9, Albania 5, Morocco 4, Algeria 1, Gambia 1, Georgia 2, Kosovo 2, Pakistan 2, Peru 1, Romania 1.

As shown in the Table, the highest number of monitored flights concerned charter flights to Tunisia, which over the years remains the country to which Italy carries out the majority of return operations, most of which are carried out through charter flights.¹³

is available on the National Guarantor's website at the dedicated page
https://www.garantenazionaleprivatiliberta.it/gnpl/it/fami_intro.page.

¹³ The list of operations monitored by the National Guarantor from 2019 to the beginning of 2020 (January 1, 2019 - February 7, 2020) is provided in the Report to Parliament 2020, and the list of operations monitored from 2020 to the beginning of 2021 (January 1, 2021 - February 11, 2021) is provided in the Report to Parliament 2021. The Reports are published on the National Guarantor's website:

https://www.garantenazionaleprivatiliberta.it/gnpl/it/pub_rel_par.page

After February 11, 2021 and up to the closing of the present Report (June 2021), the following operations were monitored: Tunisia, domestic charter flights on February 18, 2021 and April 22, 2021; Egypt, domestic charter flights on April 27, 2021 and June 4, 2021.



*National Guarantor
for the Rights of Persons Deprived of Liberty*

Year	Total number of returnees	Total number of Tunisian returnees	Number of return charter flights to Tunisia	Number of Tunisian returnees through charter flights	% of Tunisian returnees/total number of returnees throughout the year
2019	6,531	1,739	56	1,345	21%
2020	3,351	1,997	62	1,831	55%
2021 until April 30)	1,097	618	25	592	54%

Introduction to the Report

Clearly, the present Report covers a very long period of time and includes a high number of monitored operations. Therefore, it focuses only on some macro-aspects relevant to the protection of fundamental rights, including references to individual operations only when there is the need to draw the attention to specific issues. The main reason why the National Guarantor delayed the drawing up of this Report was the onset of the Covid-19 pandemic emergency, in March 2020, which caused a postponement of many of the activities carried out by the Guarantor and the concentration on issues that became extremely urgent in the meantime, such as, for example, the monitoring of the administrative detention conditions of irregular migrants, including those subjected to quarantine in hotspots and on ships. The monitoring activity was resumed in September of last year, after the actual resumption of return flights, which had also been suspended for several months; it was thus decided to add the new observations resulting from the related monitoring activity to the previous ones.¹⁴

A. Cooperation

In continuity with the past and with what stated above, the National Guarantor highlights that the level of cooperation received in order to carry out its institutional mandate has always remained high and it therefore wishes to thank the Ministry of the Interior, the Department of Public Security and, in particular, the Central Directorate for Immigration and Border Police, which is materially

¹⁴ In this regard, it must be highlighted, from the very outset, that most of the critical aspects have not changed with respect to the previous 2017/2018 Report. Therefore, in its Recommendations, as it will be said more extensively below, the Guarantor hopes for a decisive and definitive overcoming of said issues in the spirit of institutional cooperation, which has always characterized the relations between the Guarantor Authority and the Authority in charge of organizing forced return operations.



**National Guarantor
for the Rights of Persons Deprived of Liberty**

in charge of organizing the removal operations of foreign citizens irregularly present in the national territory.

With the exception of one specific incident - in relation to which a specific discussion was initiated -, the level of cooperation provided during the operations by the escort leaders and all personnel employed on duty, including the medical staff, was very positive; the members of the National Guarantor's delegation of monitors were allowed full access to the places concerned by the operations and to the relevant documentation requested.

In the past two years, the mechanism for transmitting the information flow related to return operations to be carried out has been further refined, also upon the Guarantor's request, with the timely transmission of the list of returnees and the preventive reporting of any vulnerabilities, including those related to health.

However, perplexity must be expressed for the lack of a documented reaction to the previous (ten) Reports on single forced return operations monitored from June 2016 to November 2018 and of a cumulative Report on multiple operations. Above all, the implementation of the formulated Recommendations resulted to be particularly inadequate. The lack of debate risks undermining the effectiveness of the monitoring system and thus a non-compliant application of Directive 2008/115/EC, which provides for the implementation of an effective forced return control mechanism.

The cooperation between State Institutions requires the authorities in charge to conduct a joint action aimed at raising the standards of protection of human rights in our country. The implementation of the formulated Recommendations with full will of cooperation and, at the same time, of firmness in maintaining certain principles, is an essential part of this cooperation.

B. Staff employed in the operations

B.1 Training

The National Guarantor reiterates its appreciation for the commitment of the Ministry of the Interior in the training of the escort personnel in which, as mentioned above, the Guarantor Body is also invited to participate, both as a trainer and as an observer. In this regard, however, it is necessary to emphasize the need for specific training on the subject of forced returns to be extended to all Police operators involved in the operations which, as known, begin in the facilities dedicated to the administrative detention and are not limited to the phase of international transfer.¹⁵

Therefore, the National Guarantor asks to be updated on the implementation of training programs involving all the units of the Police Forces employed in a forced return operation from the earliest stages of the procedure, that is starting from the moment when the returnee is informed of the beginning of the operation and then taken from his/her detention room.

¹⁵ On this aspect, reference is made to standard 34 of the European Committee for the Prevention of Torture (CPT) provided in the Extract from the 13th General Report of the CPT, published in 2003, which states: *"The question of the use of force and means of restraint arises from the moment the detainee concerned is taken out of the cell in which he/she is being held pending deportation (whether that cell is located on airport premises, in a holding facility, in a prison or a police station)."*



*National Guarantor
for the Rights of Persons Deprived of Liberty*

In this regard, during a forced return operation to Nigeria on February 1, 2020, the Guarantor observed that in the Immigration Removal Center (CPR) of Rome Ponte Galeria, the returnees were taken away, two at a time, by a team of six policemen equipped with helmet, nightstick and weapon in the holster (although, as later specified, devoid of magazine). This approach is diametrically opposite to the approach carried out by escort operators of forced return flights, and highlights the need for training involving all the "actors" of a forced return operation.

B.2 Professional figures

With regard to the composition of the staff employed in return operations, the Guarantor has repeatedly stressed the need for the involvement of professional interpreters and cultural mediators¹⁶ in order to always guarantee the possibility of communicating with the persons undergoing the forced return operation in a comprehensible language, thus avoiding the occurrence of misunderstandings between returnees and escorts, which have been repeatedly observed during monitoring, and to allow a humane approach that respects fundamental rights.¹⁷ In this regard, the Annex to Council Decision 2004/573/EC of 29 April 2004 states under point 3.3 letter d: "Each returnee shall be able to address the doctor or the escorts directly, or via an interpreter in a language in which he or she can express him- or herself".

Furthermore, a correct communication ensured by professional figures in charge of this task favors the use of verbal deescalation techniques, in order to prevent the use of force and coercive measures. Furthermore, it constitutes a specific fulfillment of what provided for by Decision 2004/573/EC, according to which "The organizing Member States shall ensure that appropriate medical¹⁸ and language staff are available for the removal operation".

- 1. Therefore, the National Guarantor recommends, once again, for language professionals to be present at all stages of a return operation, capable of addressing the returnees in a language they understand, in line with the provisions of the Annex to Council Decision 2004/573/EC of 29 April 2004 on the organization of joint flights for removals from the territory of two or more Member States, of third-country nationals who are subjected to individual removal orders 3.3 letter e) and of Article 11 of the Frontex Code of Conduct for Joint Return Operations coordinated by Frontex adopted in October 2013.**

¹⁶ As known, the National Guarantor is part of the European Monitoring Pool coordinated by Frontex and has had the opportunity to note how, for example, in return operations from France to Albania (Cro, 2018 and 2019) at the airport of Lille, the French Police ensured the presence of an interpreter.

¹⁷ The Committee of Ministers of the Council of Europe in its commentary in paragraph 3 of Guideline 18 of the "Twenty Guidelines on Forced Return", adopted in 2005, observes "... the lack of communication between the members of the escort and the returnee often explains panicked reactions from the returnee, especially when he/she has been given no or insufficient information about the procedure of return and the situation he/she will be confronted with in the country to which he/she is returned. Such a lack of communication may also result in a lack of respect on the part of the escort members for the returnee, leading sometimes to dehumanization".

¹⁸ Always present in operations carried out through charter flights.



*National Guarantor
for the Rights of Persons Deprived of Liberty*

B. 3 Recognizability/Identifiability

The issue of the recognizability of the role played by staff members operating in each phase of the procedure remains unresolved: the sole use of a metal badge does not guarantee full identifiability in terms, for example, of recognizability of functions, especially in complex contexts and situations such as the pre-departure phase at Immigration Removal Centers (CPR), where it is not easy (even for the monitor) to understand who belongs to the escort staff, who to the Centre's staff and the role of the various professionals present during the preparations for the return.

Such situation would benefit from the use of differently colored "vests" (escort personnel, medical personnel, monitors, other personnel) in all return operations and not only in the joint ones, where instead there has been greater adherence to the general use of a "vest". This would allow a quick identifiability of the key figures of the operation, as specified in the Annex to Council Decision 2004/573/EC of April 29, 2004, which also provides under point 1.2.5 for escorts to display a distinctive emblem for identification purposes.

- 2. Therefore, in accordance with the indications provided in Decision 2004/573/EC of the Council of 29 April 2004, the National Guarantor's recommendation is for the escorts to display, for the entire duration of the operation, their metal identification badge and, at the same time, to wear identification vests or other distinctive signs that clearly highlight the role and function carried out within the operation.**

C. Information

The National Guarantor has repeatedly highlighted the fact that foreign persons undergoing forced return should be ensured sufficient advance notice to prepare themselves both practically and psychologically. On the contrary, in many cases observed, foreign citizens detained at Immigration Removal Centers (CPRs), especially those who are involved in operations carried out by charter flights, are informed of the beginning of the operation only at the moment of their departure from the Centre: such a modality actually hinders the possibility to contact their lawyer for an update on their legal position and can therefore trigger violent reactions from the returnees who learn that they are about to be returned without having the possibility to be reassured by their lawyer about the regularity of the procedure.¹⁹

In this regard, on numerous occasions, returnees expressed their doubts and concerns to the monitors concerning the supposed irregularity of their return since, for example, they were waiting for the Judicial authority to decide on their appeal against the rejection of their asylum application. Without going into the merit of the individual cases, in general it should be noted that the person deprived of his/her liberty should always have the opportunity to contact his/her legal representative, even in the phase of the physical implementation of the return, in order to have complete and exhaustive information and avoid

¹⁹ As in the case of a foreign citizen of Tunisian nationality on January 4, 2021 for whom it was necessary to prolong an immobilization on the ground inside the Immigration Removal Center (CPR) of Ponte Galeria (Rome) in the phases immediately preceding the transfer to Fiumicino airport during a return operation. Difficulties in communicating made the episode even more problematic. The intervention of one of the Centre's mediators allowed staff to understand that the Tunisian citizen was asking to be able to communicate by phone with his lawyer and to show some documents that had been transmitted electronically to the Centre in those hours.



*National Guarantor
for the Rights of Persons Deprived of Liberty*

the rising of beliefs which risk leading to oppositional attitudes and a sense of insecurity.

According to the Committee for the Prevention of Torture of the Council of Europe (CPT), allowing a person to prepare in advance with respect to the return is not only the most respectable approach, but also the most efficient in terms of minimization of risks, especially in the delicate pre-departure phase.²⁰

The hypothesis is to increase the socio-psychological support services in the preparation of return operations, also by employing the professionals present at the Immigration Removal Centers (CPRs).²¹

Furthermore, in order to promote contacts with the country of origin right before the actual return, practices should be provided for a regulated use of cell phones during the operation. Instead, in many cases the cell phones are taken away from the returnees without the latter being given the opportunity to make at least one last phone call once they are informed that that return is imminent²².

The National Guarantor intends to obtain clarifications on this point, encouraging the experimentation of ways to allow returnees to get in touch with family members or persons they trust and inform them about their imminent return.

Fundamentally, in connection with what has been highlighted above and in order to ensure full respect of the dignity of foreign citizens and their right²³ to understand every moment of the coercive procedure to which they are subjected,²⁴ **the National Guarantor recommends that:**

- 3. the departure date is to be communicated in advance to the interested parties, in order to allow them to organize themselves for their trip, verify the restitution of all personal belongings retained**

²⁰Standard 41 contained in the Extract from the 13th General Report of the CPT, published in 2003, provides that "Removal operations of foreigners must be preceded by measures aimed at helping the persons concerned organize their return, particularly from the family, work and psychological viewpoints. The CPT has observed that the constant threat of forced removal weighing over detained foreigners who have received no prior information about the date of their removal can cause a state of anxiety that reaches the utmost intensity during the removal and may often degenerate into violent crises and outbursts of rage".

²¹ Very often, instead, the managing bodies have reported to the National Guarantor that the foreign persons had been informed of the returns only in order to prepare personal belongings.

²² This problem is also linked to the use of cell phones at the Immigration Removal Centers (CPR) which, as is known, are very different from each other throughout the country.

²³ From the Code of Conduct for Joint Forced Return Operations Coordinated by Frontex (2013):
"Article 5 Cooperation with returnees.

1. The competent authorities of the MSs as well as the other participants, taking into account individual risk assessments, shall seek cooperation with each returnee at all stages of the JRO in order to avoid, or limit to the minimum extent necessary, the use of force.

2. The competent authorities of the MSs are expected to give sufficient and clear information to the returnees about the JRO, including the possibility to lodge a complaint concerning alleged ill-treatment during the operation. "

²⁴ With regard to the content of the information to be provided, the Guidelines drawn up by Frontex for joint flights in May 2016 provide, by way of example and not exhaustively, for returnees departing from the Center to be informed about the reasons of the transfer, the stages of the journey and the phases of the procedure, and for the implementation of security checks on both the returnee and his/her luggage, and the possible use of coercive measures if necessary. Paragraph 5.7 of the document is consultable at:

[https://frontex.europa.eu/assets/Publications/General/Guide for Joint Return Operations by Air coordinated by Frontex.pdf](https://frontex.europa.eu/assets/Publications/General/Guide%20for%20Joint%20Return%20Operations%20by%20Air%20coordinated%20by%20Frontex.pdf).



*National Guarantor
for the Rights of Persons Deprived of Liberty*

- when entering the Centre, prepare their luggage in respectable conditions, notify family members or anyway trusted persons and/or their lawyer so as to obtain any updates regarding their legal position;
4. upon the beginning of the operation, at the latest, foreign citizens subjected to the procedure are to be informed of all the various steps, including the various stages of the journey, the time of stay at any stopovers, the place and approximate time of arrival in the country of origin, the carrying out of security checks on both the returnee and his/her luggage, the possible use of coercive measures in the event of refusal or opposition to return.

D. Premises used at Palermo airport for charter flights to Tunisia

As is well known, all national return operations carried out at Palermo airport by charter to Tunisia - operations that constitute the vast majority of those organized by charter in Italy - provide for consular hearings. In addition to the consular hearing itself, said return operations include security checks on the contingents coming from Immigrant Removal Centers (CPRs) other than the one in Rome Ponte Galeria, the consumption of meals and a waiting time for the completion of bureaucratic formalities relating to the take-off to Tunisia. In average, all the above requires about three hours. The stay in this area - repeatedly reported by the National Guarantor as inadequate - continues to arise concern: the critical issues regard the configuration, the state of maintenance and the furniture of the spaces used at the airport of the Sicilian regional capital, with inevitable and serious prejudice to the dignity of whoever is forced to stay there, including returnees and escort personnel.

These environments are inadequate in terms of both their degraded conditions and the absence of minimal furnishings and services, as well as the level of safety of the spaces.

In this regard, on January 4, 2021, during a forced return operation monitored by the National Guarantor, a Tunisian citizen was the protagonist of a serious episode of self-harm, as he caused several wounds on his arms through the sharp edges of the aluminum frames of the bathrooms inside the service container located next to the rooms used for security checks and hearings. Said returnee was promptly assisted by the operating personnel and medicated by the medical staff on duty with the escort device and was subsequently transferred to the nearest hospital by ambulance in order to be given specific care and more thorough checks. Naturally, this led to the interruption of the return operation of the individual and a delay, albeit limited, in the whole return operation. Immediately after the incident, the National Guarantor had the opportunity to examine the premises where it had occurred, noting not only the wear and tear, with the detachment of rusty iron fragments, but also a series of potential dangers deriving from sharp edges and sharp corners. Evidently such a solution is not compatible with the minimum levels of safety required for the prevention of self-harm episodes.

The National Guarantor asks whether this container/service is still located at the airport and is still used in return operations.

In addition, a semi-basement room open on two sides, similar to a garage, continues to be used as a "waiting area", exposed to the various weather conditions and totally unsuitable to accommodate a large group of people who may be forced to stay there for several hours. In such environment, the packed lunch is normally consumed after the consular hearing, with the migrants standing or sitting on the floor most of the time, as this area has no seats; it also lacks toilets.



*National Guarantor
for the Rights of Persons Deprived of Liberty*

In extreme synthesis, the operation substantially takes place outdoors, in summer and winter, for all the persons involved in the forced return, including Police escorts. This has been going on for several years now (and in any case at least since 2016, the year in which the National Guarantor began to monitor forced return operations). Therefore, reasons related to an emergency nature can no longer be taken into consideration, since the migration phenomenon and related returns is structural. Hence the need for the adoption of consequent structural solutions in the medium/long-term.

Still taking into consideration the material conditions of the premises used for the pre-departure phase, critical aspects have been detected also in other airports. For example, with regard to the joint return charter flight to Gambia carried out at the airport of Catania on January 30, 2019, the environment used for security checks was a container that did not guarantee conditions of confidentiality. In addition, as also noted in Bari for the return charter flight to Nigeria carried out on March 30, 2019, a suitable room for medical examinations was not present.

In view of the above, the National Guarantor reiterates the Recommendation already formulated in the past to the competent Authorities, insisting on the fact that:

- 5. the premises used for pre-departure operations at Palermo airport and at all other airports must be in a good state of maintenance and cleanliness, suitable to shelter and isolate those staying there from all weather conditions, equipped with a room for sanitary needs, must have a sufficient number of chairs and tables for the number of returnees and escort operators, and be provided with directly accessible bathrooms and snack and beverage dispensers;**
- 6. the environments used for security checks must be heated and ventilated, must ensure privacy and be provided with furnishings that respect the dignity of the individual.**

Should it be impossible or in any case not immediately feasible to carry out improvements in the sense indicated above at Palermo airport, due to the datedness of the premises, as well as to the intrinsic structural characteristics, the competent Authorities are invited to identify within the same airport, or in another location, an alternative area that may respond to the minimum conditions of safety and dignity of the persons involved in the operation.

E. Use of coercive measures

The use of coercive measures - in particular, Velcro bands applied to the returnees' wrists - is an aspect that worries the National Guarantor, as already highlighted in the past. First of all, from the point of view of consistency with the parameters of necessity, proportionality and use as a measure of last resort.

As highlighted in its latest Report, the National Guarantor registered a reduction in the use of said coercive instrument in the past, at least in some operations, during which the use of Velcro bands was limited to the boarding phase onto the aircraft. However, recently, their use has returned to be systematic and they are applied automatically as a preventive measure to all the returnees involved in the same operation, without taking into account the different individual behaviors and regardless of any opposition and/or resistance to the forced return that may have to be faced.



*National Guarantor
for the Rights of Persons Deprived of Liberty*

It has been observed, in fact, that in almost all of the return operations monitored, returnees were systematically left with the bands applied to their wrists for almost the entire duration of the on-the-ground phases up to almost the take-off of the aircraft, thus suffering the imposition of restraints for a prolonged period of time.²⁵

In this regard, it should be firmly reiterated that international standards on the use of force and coercive measures in forced return operations²⁶ agree on the need for an individual risk assessment based on the behavior of the single individual and that coercion may be used "...on individuals who refuse or resist removal" (Decision 2004/573/EC).²⁷

Similarly, this approach - aimed at not using coercive measures on cooperative foreign citizens - must also be adopted during bus transfers from detention centers to airports.²⁸

Furthermore, based on the European observatory at the Guarantor's disposal - since it has been participating both in the activities of the European Pool of Monitors since 2018, and in the training activities of the project *Forced Return European Migration* (Frem III) coordinated by the ICMPD institute on behalf of Frontex and the European Agency for Fundamental Rights (Fra) since 2017 -, the intensive and widespread use of Velcro bands or other coercive measures is unknown to the escort devices of other European countries, as easily observable even during the joint operations (JRO) in which Italy often participates.

As repeatedly recalled by the National Guarantor, such a massive and indiscriminate use of coercive measures, contrary to the principles of necessity, proportionality, reasonable use and recourse as a measure of last resort, not based on an individual risk assessment subject to continuous verification during the operation is unlawful and constitutes a violation of human dignity as indicated by the European Court of Human Rights in numerous rulings.²⁹

²⁵ This finding is reported in the checklists drawn up as a result of the monitoring activity carried out by the monitors. In particular, in the return operations to Tunisia, the monitors observed that, except for the time of the consular hearing, which lasted about ten minutes, the returnees, in some cases from the early hours of the morning, constantly wore Velcro bands around their wrists, in some cases even while eating.

²⁶ See Frontex Guidelines for joint forced return operations by means of flight coordinated by Frontex: point 5.6 *"The use of coercive measures must not be systematic and must be justified in each case by an individual risk assessment"*.

²⁷ And while considering the "risk of escape" among the motivations that may justify the adoption of a coercive measure, it is expected that such danger is not merely hypothetical but "serious" and "immediate", see Article 6 of the Frontex Code of Conduct (2013).

²⁸ According to the standards drawn up specifically by the CPT for the transportation of detained persons (n.b. of criminal nature) *"The application of hand cuffs and/or body belts to detainees during transportation should only be resorted to when the risk assessment in an individual case clearly warrants it"* (from the Thematic Sheet on the Transportation of Detained Persons drawn up by the CPT in June 2018). It should be added that the security measures adopted with respect to foreign nationals in transfers within the airport between the various environments indicated in Paragraph D systematically provide, in addition to the use of wrist restraints, for the underarm accompaniment by the two escort operators in charge.

²⁹ *Selmouni v. France*, ruling of July 28, 1999 para. 99, *Berlinski v. Roland* ruling of June 20, 2002 paragraphs 59-65. *"In respect of a person deprived of his liberty, recourse to physical force which has not been made strictly*



*National Guarantor
for the Rights of Persons Deprived of Liberty*

- 7. Therefore, the National Guarantor recommends that the use of force and coercive measures during forced return operations is to be resorted to in full compliance with European and international standards that allow their use only as a measure of last resort, in cases of strict necessity in respect of "individuals who refuse or resist removal" (Decision 2004/573/EC³⁰) or in cases of serious and immediate risk of escape or damage to the physical integrity of the foreign citizen (self-harm) or of third persons or damage to property (Article 6 of Frontex's 2013 Code of Conduct for Joint Return Operations), without systematicity and on the basis of an individual and dynamic risk assessment (Frontex Guidelines on Joint Flights May 2016).**

The National Guarantor is aware of the risks associated with the implementation of such operations and, therefore, in the cooperative and preventive spirit that characterizes the institution, invites to adopt a gradual and progressive path towards the elimination of the use of bands, as well as to experiment their non-use for a common evaluation of the outcome of their progressive disapplication.

Moreover, should there be the need to contain an individual who refuses or resists removal, the National Guarantor highlights the importance for the health personnel present in the operations to carry out a constant monitoring activity aimed at verifying the modalities of implementation of the maneuver and the health conditions of the individual subjected to such measure.³¹

- 8. The National Guarantor recommends that, in order to prevent accidents, restraint interventions involving the intensive use of force are to be always monitored by medical personnel who**

necessary by his/own conduct diminishes human dignity and is in principle an infringement of the right set forth in Article 3".

³⁰ The Guidelines drawn up for joint return operations provided in the Annex to the Decision of the Council of the European Union of April 29, 2004 regarding the use of coercive measures, provide for as follows:

"a) Coercive measures shall be implemented with due respect to the individual rights of the returnees.

b) Coercion may be used on individuals who refuse or resist removal.

All coercive measures shall be proportional and shall not exceed reasonable force.

The dignity and physical integrity of the returnee shall be maintained. As a consequence, in case of doubt, the removal operation including the implementation of legal coercion based on the resistance and dangerousness of the returnee, shall be stopped following the principle 'no removal at all cost'".

c) Any coercive measures should not compromise or threaten the ability of the returnee to breathe normally. In the event that coercive force is used, it shall be ensured that the chest of the returnee remains in upright position and that nothing affects his or her chest in order to maintain normal respiratory function.

d) The immobilization of resisting returnees may be achieved by means of restraints that will not endanger their dignity and physical integrity.

e) The organizing Member State and each participating Member State shall agree on a list of authorized restraints in advance of the removal operation. The use of sedatives to facilitate the removal is forbidden without prejudice to emergency measures to ensure flight security.

f) All escorts shall be informed and made aware of the authorized and forbidden restraints."

³¹ In practice, however, it has been observed that even during prolonged ground restraints of returnees, operations are practiced without any involvement and intervention of the medical staff. Such a circumstance occurred, for example, in the return flight carried out on March 30-31, 2019 to Nigeria during which a Nigerian citizen who refused to board was restrained on the floor by four police officers from 1:15 p.m. to 1:40 p.m.. During the entire period of restraint on the floor, the medical personnel who were already on board the aircraft never intervened in order to verify the individual's physical conditions.



*National Guarantor
for the Rights of Persons Deprived of Liberty*

constantly monitor the individual's health conditions and whether he/she is able to further withstand the coercive measure put in place on him/her.

With regard to the coercive tools used, it must also be noted that on certain occasions during the ground phases, monitors reported the use of metal handcuffs. Such circumstance was in particular observed during the joint return operations to Nigeria carried out on March 30, 2019, April 18, 2019, June 22, 2019, September 21, 2019 and November 30, 2019. On these occasions, handcuffs were applied in most cases for an extended period of time to restrain individuals to the seats of the car used for the transfer to the airport.

The National Guarantor observes that the indications contained in the operational telegrams organizing the operations provide for the escort service to be carried out without a weapon and security handcuffs. Therefore, the National Guarantor asks for clarifications on the matter.

F. Health protection and health care

The aspects related to health protection were widely considered in the previous Report. Therefore, the present one simply reiterates the fact that, in accordance with international standards on the subject, all persons involved in a forced return procedure must undergo a prior medical examination. Furthermore, a copy of the relevant health records, especially for those who have particular health problems or who have certain therapeutic needs, must be made available to the health personnel present in the operation for appropriate care.

As a result of what has been observed in the course of some operations, the National Guarantor highlights that the medical certificate regarding the suitability for return must be updated if, after its issuance which may occur even several hours before the beginning of the operation, a critical event occurs, such as a sudden indisposition, an accident, a self-harming episode, an intensive use of force and of coercive measures.

In this regard, with particular reference to the precautions to be taken towards persons at risk of suicide or with self-harm tendencies, the principle to be taken into consideration is the one expressed by the CPT on the occasion of the monitoring of a return flight carried out from Germany to Afghanistan in 2018: "The CPT recommends that the German authorities ensure that persons at risk of self-harm and/or suicide or with mental health problems undergo a comprehensive medical assessment, including by an independent mental health professional, if appropriate, before a conclusion is drawn on whether these persons be deemed as "fit to travel"". ³²

In addition, it was noted that the principle of therapeutic continuity was not respected in some operations.

9. The National Guarantor renews the Recommendation to always guarantee the continuity of treatment or, in any case, of therapeutic programs at least for the entire duration of the forced return operation. ³³

³² <https://rm.coe.int/1680945a2d>

³³ For example, in the operation carried out on January 30, 2020 to Tunisia, methadone treatment was not guaranteed to one of the returnees, according to the monitor, due to the supervening unavailability within the Center.



*National Guarantor
for the Rights of Persons Deprived of Liberty*

G. Child protection

As mentioned, the National Guarantor periodically receives the list of citizens included in the lists of persons to be returned to their country by charter flights.

On several occasions the National Guarantor found that the list of Tunisian citizens included minors for whom, as is known, the Italian law does not provide for removal. In some cases, on the signaling of the National Guarantor, such returns were suspended and the individual positions reassessed, but in others the operation was carried out anyway on the basis of the consideration that the age declared at the time of identification had remained in the records despite being subsequently verified. In this regard, the fact of not changing the date recorded in the acts during the first identification may be symptomatic of superficial verifications carried out without the substantive and procedural guarantees provided for by Article 19-bis of Legislative Decree No. 142 of 18 August 2015 introduced by Law No. 47 of 7 April 2017 on "Provisions on protection measures of unaccompanied foreign minors". In more than one case, in fact, it was confirmed that situations in which there was uncertainty concerning the age were resolved by the competent territorial authorities through the implementation of an auxological examination which, as is known, following the approval of the above-mentioned legislation can be ordered only on the provision of the Public Prosecutor's Office at the Juvenile Court and in any case within the framework of a holistic examination of multidisciplinary nature. According to the law, the assessment of an individual's age must not be limited to a physical examination, but must also include assessments relating to the individual's development and mental maturation.

The National Guarantor believes that it is disrespectful of the Institutions to recommend the absolute non-return of an unaccompanied foreign minor, totally respecting the prohibitions of expulsion and refoulement established by Article 19 of the Consolidated Act on Immigration. The National Guarantor confides in the accurate fulfilment of said provision and thus simply **recommends that:**

- 10. the verification of an individual's age is to be carried out in accordance with the rules and regulations laid down in Article 19- bis of Legislative Decree No. 142 of 18 August 2015, which in the case of well-founded doubts provides for a procedure conducted by the Judicial Authority with specific and accurate guarantees to protect the interested party.**

It also recommends that:

- 11. the lists of returnees are to contain updated personal data in relation to the implementation of new identification procedures.**

H. Frontex Complaints Mechanism

Similarly to what has been observed in previous Reports on joint forced return operations carried out with the support of the *European Border and Coast Guard Agency*, commonly known as Frontex, the National Guarantor notes that the complaints mechanism, currently governed by Article 111 of Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 with respect to the functioning of the Agency, is completely ineffective.



*National Guarantor
for the Rights of Persons Deprived of Liberty*

Despite the fact that a great deal of material has been produced in various languages, said documentation is not in actual fact made available and no information is provided to returnees regarding such possibility.

Based on data provided by the Agency to the National Guarantor from 2016 to March 26, 2021, Frontex received only three complaints regarding Italy and none of them were related to forced return activities.³⁴

In its 2017 Annual Report,³⁵ the CPT emphasized that effective complaints mechanisms are a fundamental guarantee against mistreatment, specifying that "they should be available, accessible, confidential/safe, effective and traceable. As part of these guarantees, persons deprived of their liberty should promptly receive information, both orally and in writing, about all avenues of complaint, in a language they can understand. However, during the present return operation, none of the returnees was informed about this right, nor were they told how to make a complaint, and there were no complaints forms provided during the flight, rendering the right to complain ineffective in practice. The CPT recommends that the German authorities provide adequate information to returnees on how to make a complaint, both orally and in writing, in a language they can understand, prior to the departure of the flight. The complaints mechanism should be made accessible and effective in practice".

12. Therefore, the National Guarantor recommends the competent Authorities to inform the returnees in a timely manner, and in any case before their departure, in a language and manner they understand concerning the possibility of reporting violations of their fundamental rights during a forced return procedure carried out with Frontex's support.

In presenting this Report, the National Guarantor reminds that each monitoring activity inherently represents an element of cooperation with the Institutions, and wishes to thank the Ministry of the Interior and, in particular, the departmental offices involved in the operations reported herein, as well as the escort chiefs and all operating personnel, for the availability and cooperation offered during the monitoring.

The present Report contains some Recommendations and the request for some clarifications to which the National Guarantor asks for a reply from the competent Authorities within thirty days. This Report will be made public on the Guarantor's website, without any indication of names, after the thirty days indicated, together with the answers received by said date.

Rome, August 31, 2021

Mauro Palma

³⁴ All three were considered inadmissible as they did not concern the Agency's activity (one concerned a Tunisian born in Italy and raised in Tunisia who asked to return to Italy and the other two concerned foreign citizens rejected at the border).

³⁵ <https://rm.coe.int/16807bc1cf>